



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 28561904

Date: NOV. 8, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a human resources consultant, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualifies as a member of the professions holding an advanced degree, but that the record did not establish that a waiver of the job offer requirement is in the national interest. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 immigrant classification, as either a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility for the classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. While neither statute nor the pertinent regulations define the term “national interest,” *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for

adjudicating national interest waiver petitions. *Dhanasar* states that USCIS may, as a matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Director found that the Petitioner qualifies as an advanced degree professional based upon obtaining the foreign equivalent of a bachelor's degree in psychology followed by at least five years of progressive work experience. See 8 C.F.R. § 204.5(k)(2) (a member of the professions who possesses a bachelor's degree or the foreign equivalent degree followed by at least five years of progressive experience in the specialty will qualify as an advanced degree professional). The Director also found that the Petitioner established the substantial merit of the proposed endeavor. However, the Director concluded that the Petitioner did not establish the endeavor's national importance, that she is well-positioned to advance it, or that, on balance, waiving the job offer requirement would benefit the United States. On appeal, the Petitioner submits a brief in which she asserts that the Director did not thoroughly analyze her eligibility for a national interest waiver under the *Dhanasar* framework and that she has, in fact, established her eligibility.

The Petitioner proposes to operate a human resources consultancy business based in Florida. The Petitioner states that the company will offer services such as coaching, therapy, assessments, personal development, personal branding, and counseling, and that the company will market its services to executives, public officials, entrepreneurs, and business owners. The Petitioner's business plan estimates that by year five the company will have seven employees and earn an annual \$250,000 in profit.

We first consider the Petitioner's claim that she has established the national importance of the endeavor. In determining national importance, we consider an endeavor's potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that has significant potential to employ U.S. workers or to have other substantial positive economic effects, particularly in an economically depressed area, may have national importance. *Id.* at 890.

In concluding that the proposed endeavor did not meet this requirement, the Director noted that although the Petitioner states that she intends to work in human resources consulting, the focus of the national importance analysis is not on the importance of the industry, field, or occupation, but rather on the specific endeavor that the individual proposes to undertake. The Director also stated that the Petitioner did not submit evidence of the business possessing any current or potential clients and that she did not establish that the endeavor would be similar to her past work, and that therefore the Petitioner's future work was not well-defined. The Director also concluded that the Petitioner's

¹ See also *Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

business plan did not sufficiently establish that the company could pay for the projected salaries and that the Petitioner did not establish that she possesses the funds that will be used for the company's startup expenses. As to the Petitioner's claim that there is a high demand for human resources consulting in the United States, the Director stated that this did not establish that the Petitioner's work stands to impact the broader field or otherwise have implications rising to the level of national importance.

On appeal, the Petitioner objects to the Director's conclusion that the proposed endeavor is not sufficiently "well-defined." The Petitioner asserts that, to the contrary, she has sufficiently defined her proposed endeavor and its national importance, that she has provided evidence of her past accomplishments, and that these accomplishments are representative of the work she will do in her proposed endeavor.

Upon review of the record, we agree with the Petitioner that her personal statement and business plan provide sufficient details regarding the proposed endeavor for us to analyze its national importance. The record also contains evidence of the Petitioner's professional work history in human resources, and we conclude that the Petitioner's stated intent to continue providing human resources services is sufficiently credible. As such, we disagree with the Director's characterization that the proposed endeavor is not sufficiently "well-defined."

Although we agree with the Petitioner that she has demonstrated her intent to establish a human resources consultancy business and that she has prior professional experience in this field, we disagree that this establishes the proposed endeavor's national importance. While the record contains evidence, such as reference letters from the Petitioner's prior employers and colleagues, that show that she appears to be well-respected in her field, the record does not contain evidence that the Petitioner's past achievements resulted in a broad impact on the human resources field, or otherwise demonstrate that her current endeavor is nationally important. Moreover, we note that while a petitioner's past work may be helpful in illustrating how they plan to carry out their proposed endeavor and thus could help show its potential prospective impact, the focus of the first prong is on the proposed endeavor itself and not the petitioner. *See Matter of Dhanasar*, 26 I&N Dec. at 890. Evidence of the Petitioner's skills, achievements, and record of success generally relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the [noncitizen] and whether they are well-positioned to advance it. *Id.*

The Petitioner also asserts that she did submit evidence of potential clients and of her ability to invest startup funds in her business, and that the Director erred in stating otherwise. But moreover, the Petitioner objects to the Director considering the availability of the startup funds in the national importance determination at all; the Petitioner contends that the issue of funding relates to whether she is well-positioned to advance the endeavor, and thus is a consideration for the second *Dhanasar* prong.

We acknowledge that the record contains letters from two business owners who claim to be interested in the Petitioner's consulting services, a bank letter stating the Petitioner's account balance, and paystubs demonstrating the Petitioner's prior income. However, even were we to conclude that this demonstrates interest from potential clients and the ability to invest funds in the business, this would not establish the proposed endeavor's national importance. First, we agree that, in general, available

funding and interest from potential customers, clients, or users are factors that are more appropriately considered in the second *Dhanasar* prong. See *Matter of Dhanasar*, 26 I&N Dec. at 890; see also 6 *USCIS Policy Manual* F.5(D)(1), <https://www.uscis.gov/policy-manual>. However, letters from potential clients and the availability of funding could be relevant to the first prong if, for example, the clients discuss the potential impact of the endeavor on the field or if the funding helps establish the potential for a substantial positive economic effect. But here, the Petitioner's potential client letters, bank letter, and paystubs do not demonstrate that the Petitioner's human resources consulting business has the potential for a broad impact on the field or that it may have substantial positive economic effects.

The Petitioner also discusses on appeal the USCIS Policy Manual guidance related to individuals with advanced STEM (science, technology, engineering, and mathematics) degrees and entrepreneurs applying for national interest waivers. See generally 6 *USCIS Policy Manual*, *supra* at F.5(D)(2) and (D)(4). Although the Petitioner references this guidance and asserts that she is an entrepreneur who possesses an advanced STEM degree, she does not explain how this guidance establishes her eligibility for a national interest waiver.

The guidance related to advanced STEM degrees states that USCIS recognizes the importance of progress in STEM fields and the essential role of individuals with advanced STEM degrees in fostering this progress, especially in critical and emerging technologies, national security, or other STEM areas important to U.S. competitiveness. See generally 6 *USCIS Policy Manual*, *supra*, at F.5(D)(2). However, the record does not demonstrate that the proposed endeavor in human resources consultancy relates to or has the potential to result in progress for a critical and emerging technology or national security, nor has the Petitioner demonstrated that the proposed endeavor aims to advance a STEM technology or STEM research. Although the Petitioner's degree is in a STEM field, the Petitioner has not established that her proposed endeavor has the potential for a broad impact in the field of psychology.

The guidance related to entrepreneurs seeking national interest waivers acknowledges that the evidence submitted in such petitions may be unique and discusses some of these types of evidence. See generally 6 *USCIS Policy Manual*, *supra*, at F.5(D)(4). While the Petitioner describes her proposed endeavor as an entrepreneurial effort, she does not explain how this guidance helps establish that her proposed endeavor has national importance. Moreover, the record lacks many of the specific types of evidence that the guidance states may be relevant in entrepreneurial petitions, such as outside investments, incubator or accelerator participation, published materials about the Petitioner, and intellectual property. *Id.*

Finally, the Petitioner repeats on appeal the claims, previously made in response to a request for evidence (RFE), that human resources services are valuable for employee retention and engagement and that improving hiring in one industry has "ripple effects" that positively impact other aspects of the economy. The Petitioner's claims about the importance of employee engagement, employee retention, job creation, and the articles the Petitioner cites in support of these claims do not establish the national importance of the Petitioner's specific, proposed endeavor. These generalized claims relate to the human resources field overall, and not the Petitioner's proposed endeavor. We agree with the Director that, in determining national importance, the relevant consideration is the "specific endeavor that the [noncitizen] proposes to undertake," rather than the importance of the industry, field, or profession. See *Matter of Dhanasar*, 26 I&N Dec. at 889.

Although the Petitioner claims on appeal that the proposed endeavor has the potential for a broad impact “as she will support and guide businesses through post-pandemic recovery, improve employee retention for U.S. companies, and present a positive ripple effect on the U.S. economy and job market,” these claims are not supported by the evidence in the record. Although the record reflects the Petitioner’s experience in the field and her intention to provide valuable services to her clients, the Petitioner has not offered sufficient information or evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not extend beyond his students to impact his field more broadly. *Matter of Dhanasar*, 26 I&N Dec. at 893. The same is true here. The Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her company and its clientele to impact the human resources industry or the U.S. economy at a level commensurate with national importance.

The Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We acknowledge the Petitioner’s arguments on appeal as to the second and third prongs of *Dhanasar* but, having found that the evidence does not establish the Petitioner’s eligibility as to the first prong, we reserve our opinion regarding whether the record establishes the remaining *Dhanasar* prongs. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met the national importance requirement of the first prong of *Dhanasar*. We therefore conclude that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.